

Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

IN RE:

JENNIFER AND EUGENE WONG, for
themselves and as parents of Student JW, a
minor,

Plaintiffs,

v.

SEATTLE SCHOOL DISTRICT NO. 1,

Defendants.

Case No. C16-1774 RAJ

SECOND AMENDED
JOINT PRETRIAL ORDER

COMES NOW Plaintiffs JENNIFER AND EUGENE WONG, for themselves and as
parents of JW, a minor (hereinafter "Student" or "J.W.") by and through their attorneys of record
and Defendant, the Seattle School District No. 1 ("District") by and through their attorneys of
record, submit the following Joint Pretrial Order as directed by the court pursuant to the
Amended Order Setting Trial Date & Related Dates entered on February 1, 2018 [ECF No. 28],
and Local Rule 16 and Federal Rule of Civil Procedure 16.

JOINT PRETRIAL ORDER - 1

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(1) **Jurisdiction**

This court has jurisdiction pursuant to 28 U.S.C. § 1332. This is an action for declaratory and injunctive relief, attorneys' fees and damages pursuant to Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.* (hereinafter also referred to as the "ADA") and Chapter 49.60 of the Revised Code of Washington and IDEA, 42 U.S.C. § 1415 *et seq.*, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.*, ("Section 504"). The Court is vested with original jurisdiction under 28 U.S.C. §§ 1331 and 1343.

(2) **Claims and Defenses**

A. Plaintiffs will pursue at trial the following claims:

Plaintiffs are pursuing their claims for monetary damages and they plan to pursue the following claims at trial:

Claims for declaratory and injunctive relief, attorney's fees and damages for violations of Title II of the American with Disabilities Act, 42 U.S.C. § 12131 *et seq.*, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.* ("Section 504") and 34 C.F.R §§ 104 *et seq.*

B. Defendant asserts as defenses the following:

At trial, the District intends to pursue the following affirmative defenses:

1. **Failure to exhaust their administrative remedies.** The Plaintiffs must exhaust the IDEA's administrative remedies before filing a civil action under the Constitution or federal laws protecting the rights of children with disabilities that seeks relief that is also available under the IDEA. The Plaintiffs failed to exhaust the IDEA's administrative remedies for all claims not raised in OSPI Cause No. 2015-SE-0018.

1 2. **Statute of limitations.** Washington's general statute of limitations for personal
2 injury claims is three years. Section 504 and the ADA lack statutes of limitations, so courts borrow
3 the most closely analogous state statute of limitations. The IDEA has a two-year statute of
4 limitations. Washington's general statute of limitations for personal injury claims is three years.
5 Plaintiffs assert claims for which the right of action accrued outside the application limitations
6 periods described above. Plaintiffs are barred from now bringing those claims.

7 3. **Judicial estoppel.** The Plaintiffs should be judicially estopped from raising some
8 or all of their claims. In OSPI Cause No. 2015-SE-0018, they argued to their benefit that J.W.
9 experienced significant academic, social, and emotional benefit from his placement at the
10 Academy of Precision Learning (APL) during the 2014–2015 and 2015–2016 school years. In
11 addition, the Plaintiffs took the position in that case that J.W.'s disabilities made any proposed
12 placement within the District's schools inappropriate. The Plaintiffs should be estopped from
13 making arguments or claims to the extent that Plaintiffs' claims are inconsistent with the position
14 they took in prior litigation.
15

16 4. **Comparative fault.** On February 7, 2014, the family of another student obtained a
17 TRO against J.W. from King County Superior Court (Cause No. 14-2-043767). The TRO
18 prohibited J.W. from attending school for ten days. The Parents did not inform J.W. that the TRO
19 was the reason he was not permitted to attend school, and J.W. formed the mistaken belief that the
20 District unilaterally prevented him from attending school. Plaintiffs did not correct J.W.'s mistaken
21 belief. In prior litigation, J.W.'s private therapist testified that this false belief is the "key" to his
22 anxiety about the District and attending one of its schools. To the extent J.W. has been injured by
23 this mistaken belief, the Plaintiffs are at fault for the injury.
24
25

1 5. **Payment.** The District has paid for all programing and services necessary to
 2 compensate J.W. for any denials of FAPE under the IDEA that occurred during the 2013–2014,
 3 2014–2015, and 2015–2016 school years. To the extent the Plaintiffs seek damages relating to
 4 alleged denials of FAPE during those school years, the District has already compensated them for
 5 any such damages.

6
 7 (3) **Admitted Facts**

8 The following facts are admitted by the parties:

9 A. In 2009, at the age of four (4), J.W. was qualified by the District for special
 10 education and related services under the Individual with Disabilities in Education Act, 20
 11 U.S.C. §1400, et seq. (“IDEA”), under the category of Autism.

12 B. At all times relevant to this matter, J.W. qualified for special education and
 13 related services under the Individuals with Disabilities in Education Act, 20 U.S.C. 1400 et
 14 seq. (“IDEA”) under the category of Autism.

15 C. The District developed a behavior intervention plan for J.W. in or about
 16 December 2012.

17 D. The District developed an annual individualized education program (IEP) for JW
 18 in or about September 2013.

19 E. The District developed a behavior intervention plan for J.W. on or about
 20 November 2013.

21 F. It was reported by student R.P.’s father, Mr. Pontrelli, that during a school field
 22 trip on or about November 14, 2013, J.W. pinched R.P.

1 G. On or about November 21, 2013 the District issued a “Targeted Student Support
2 Plan” for R.P.

3 H. During the 2013-2014 school year the district issued Notices of Disciplinary
4 Action against J.W. dated November 7, 2013, November 15, 2013, November 18, 2013,
5 November 20, 2013 and February 6, 2014.

6 I. J.W. began receiving counseling from Erin Milhem, Psy.D. through her private
7 practice in July 2013. Dr. Milhelm was on staff and part of the team that assisted at the CARE
8 Clinic with Jensen’s clinical diagnosis in 2010. She was his first assigned clinician after the
9 2010 clinical diagnosis. J.W. received counseling from Dr. Wilhelm in 2010 and 2011.
10

11 J. During the 2013–14 school year, R.P.’s parents filed harassment, intimidation,
12 and bullying (“HIB”) complaints against J.W. for incidents that they allege occurred on
13 November 7, 2013, November 8, 2013, November 13, 2013, November 15, 2013, November
14 18, 2013, December 10, 2013, and December 11, 2013.

15 K. In an email dated December 16, 2013, Eugene Wong requested, among other
16 things, that R.P. be moved out of J.W.’s classroom and made a request to the District regarding
17 J.W.’s entire disciplinary record.
18

19 L. On January 6, 2014, the District issued its investigation report related to the HIB
20 complaints made by R.P.’s parents.

21 M. On or about January 10, 2014, the District presented a “Targeted Student Support
22 Plan” for J.W.
23

24 N. In or about January 2014, the District assigned J.W. with a one-to-one emergency
25 instructional assistant.

1 O. R.P.'s parents filed another HIB complaint against J.W. on February 6, 2014.

2 P. R.P.'s parents applied for and received a temporary restraining order ("TRO")
3 against J.W. on February 7, 2014 under King County Superior Court Cause No. 14-2-04376-7.
4 The TRO restrained J.W. from attending Schmitz Park Elementary School and ordered that
5 J.W. be transferred to a different school.

6 Q. On February 18, 2014, the TRO was reissued through February 25, 2014.

7 R. The TRO was dismissed on February 24, 2014, by King County Superior Court
8 Judge Monica Benton.

9 S. The District transferred R.P. out of J.W.'s classroom and into a different
10 classroom on February 24, 2014.

11 T. The last day that J.W. attended school at Schmitz Park Elementary, a District
12 school, was February 6, 2014.

13 U. The District provided 2 hours of tutoring per day for two weeks prior to the
14 quashing of the TRO on February 24, 2014.

15 V. The District sent J.W.'s father, Eugene Wong, an e-mail on February 28, 2014
16 with a reentry plan to Schmitz Park Elementary for March 3, 2014.

17 W. The Parents informed G. Kischner via a March 9, 2014 email that the District's
18 proposed reintegration plan for J.W. failed to provide the necessary supports for J.W.

19 X. J.W. accessed tutoring from Yellow Wood Academy in March 2014 for the
20 remainder of the 2013–2014 school year.

21 Y. Thereafter, J.W. attended the Academy for Precision Learning ("APL") a private
22 school, since the beginning of the 2014-2015 school year.

1 Z. The Parents received copies of the disciplinary Notices in March of 2014 in
2 response to their education records requests.

3 AA. The Parents made a request for an independent education evaluation (“IEE”) at
4 District expense, in the Spring of 2014. The District filed Due Process against J.W.’s parents
5 pursuant to IDEA with the Washington State Office of Administrative Hearings) on or about
6 June of 2014. The District alleged, inter alia, that the District’s 2012 Tri-Annual-Re-Evaluation
7 was appropriate and would defend the Re-Evaluation provided J.W. a free and appropriate
8 education (“FAPE”) under the IDEA during the 2012-2013, 2013-2014 school years.
9

10 BB. The District subsequently dismissed the due process action and paid for the IEE
11 conducted by Dr. Alison Brooks.

12 CC. J.W. began attending the Academy for Precision Learning (“APL”), a private
13 school since the beginning of the 2014–2015 school year.

14 DD. The Parents filed a request for due process hearing against the District pursuant to
15 the IDEA with the Washington State Office of Administrative Hearings (OSPI Cause No.
16 2015-SE-0018) on March 2, 2015. The Parents alleged, inter alia, that the District denied J.W.
17 a free and appropriate education (“FAPE”) under the IDEA during the 2013–2014, 2014–2015,
18 and 2015–2016 school years.
19

20 EE. After trial in that action, the administrative law judge (“ALJ”) issued findings of
21 fact and conclusions of law. He found that the District failed to provide J.W. with a FAPE
22 under the IDEA, and awarded certain remedies to the parents which the District provided.
23

24 FF. The Parents filed another request for Due Process hearing under OSPI Cause No.
25 2016-SE-0082.

(4) **Issues of Law**

Plaintiffs' Issues of Law

Plaintiff asserts the following are the issues of law to be determined by the court:

1. Whether the District violated Title II of the Americans with Disabilities Act by subjecting Plaintiff JW to discriminatory treatment, excluding JW from attending school, punishing him for his disability, failing to allow him to access education, and failing to provide accommodations?

2. Whether the District discriminated against the Plaintiff JW, and others who are similarly situated, by denying full and equal access to a Free and Appropriate Public Education (FAPE) in derogation of 42 U.S.C. § 12131 *et seq.*, and whether the District is still discriminating?

3. Whether the District denied JW meaningful access under Title II of the Americans with Disabilities Act and the Section 504 of the Rehabilitation Act by failing to provide JW with appropriate educational and related services, accommodations, and supplemental services which he required in order to have access to the District's programs and services, and to make appropriate developmental and educational progress equal to that provided to children without disabilities?

4. Whether the District acted with deliberate indifference towards JW by failing to provide accommodations when they were on notice of his need for accommodations?

5. Whether the District acted with deliberate indifference towards JW by disciplining him without cause and without parental notification despite being on notice of his disability?

1 6. Whether the District acted with deliberate indifference towards JW by failing to keep
2 JW safe from harm despite his disability?

3 7. Whether the District acted with deliberate indifference towards JW by excluding him
4 from school and access to education despite being on notice of his disability?

5 8. Whether JW is entitled to damages, injunctive relief, and attorney's fees and costs
6 incurred?

7 **Defendant's Issues of Law**

8 The District objects to the Plaintiffs' statement of issues of law as overly complex,
9 repetitive, and confusing. The District also objects to the Plaintiffs' second proposed issue of law
10 to the extent that it relates to "others who are similarly situated." The Plaintiffs do not represent a
11 class and do not have standing to bring claims on behalf of others.
12

13 The District proposes the following issues of law:

14 1. Whether the District violated Title II of the Americans with Disabilities Act
15 ("ADA") or Section 504 of the Rehabilitation Act ("Section 504") by failing to provide Plaintiff
16 J.W. with meaningful access to its programs between November 14, 2013 and May 31, 2016.
17

18 2. Whether the District violated the ADA or Section 504 by failing to provide Plaintiff
19 J.W. with reasonable accommodations.

20 3. Whether the District violated the ADA or Section 504 by failing to provide Plaintiff
21 J.W. with a free and appropriate public education ("FAPE") within the meaning of either statute
22 between November 14, 2013 and May 31, 2016.
23

24 4. If the District violated the ADA or Section 504 in its treatment of Plaintiff J.W.
25 between November 14, 2013 and May 31, 2016, did it do so with deliberate indifference?

Expert Witnesses

A. The parties are in dispute as to the number of expert witnesses to be called. Defendant has filed motions in limine to exclude certain experts identified by Plaintiffs.

Plaintiffs expect to call the following expert witnesses:

1. Dr. Erin Milhem
528 E. Spokane Falls Blvd., Ste. 26A
Spokane, WA 99202

Dr. Milhem was JW's therapist for many years. She will testify as a treating provider and an expert regarding her knowledge of JW, the harm caused to JW by the District, and all other facts and circumstances giving rise to this matter.

2. Dr Rina Marie Leon Guerrero
PEERS PLAY
6239 Woodlawn Avenue N.
Seattle, WA 9810

Dr. Leon Guerrero will testify as a treating provider regarding her knowledge of J.W., the and all other facts and circumstances giving rise to this matter.

3. Patricia A. Moroney (may testify)
1808 East Union Street, Suite G
Seattle, WA 98122

Ms. Moroney is JW's SLP. She will testify as a treating provider and an expert regarding her knowledge of JW, and of all other facts and circumstances giving rise to this matter.

4. Dr. Julie Osterling (may testify)
Formerly w/ Care Clinic
Contact information to be provided

Dr. Osterling will testify regarding an evaluation performed on JW.

5. Thom Thompson
Thompson & Assoc.
700 N.W. Gilman Blvd. #375

Issaquah, WA 98027
425-427-2988

Mr. Thompson will testify as an expert regarding the District's duties to protect students with disabilities and the breaches of said duties.

6. Brooks Powers Group
1200 Westlake Avenue N., Ste. 810
Seattle, WA 98109

Dr. Brooks will testify regarding her knowledge of JW and her evaluations performed on JW.

7. Judith Parker (Vocational Expert)
OSC Vocational Systems, Inc.
10132 N.E. 185th Street
Bothell, WA 98011

Judith Parker will testify regarding the vocational damages and loss of earning capacity for JW as a result of the District's harm to J.W.

Defendant expects to call the following expert witness:

1. Dr. Allison Brooks
Brooks Powers Group
1200 Westlake Avenue N. Ste. 810
Seattle, WA 98011

Dr. Brooks will testify regarding her evaluations of J.W. in 2014 and 2016, including her lay and expert knowledge related to J.W. and any actual or potential underlying conditions or medical diagnoses identified in her evaluations.

Other Witnesses

The names and addresses of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony are:

JOINT PRETRIAL ORDER - 11

HENRY & DEGRAFF, P.S.
150 NICKERSON ST, STE 311
SEATTLE, WASHINGTON 98109
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Witnesses on Behalf of Plaintiffs

8. Eugene and Jennifer Wong
c/o Shaw Law Group PLLC
323 1st Avenue West
Seattle, WA 98119
206-623-1225

The Plaintiffs Wong will testify regarding their knowledge of their son, JW, and all facts and circumstances giving rise to this matter.

9. Witnesses on behalf of Plaintiffs from Seattle School District (“SPS”) Staff:

Schmitz Park (Genessee Hill) Elementary Staff and District current or former:

The following SPS staff and administration will testify regarding their knowledge of JW, his education and accommodations at SPS, and all facts and circumstances giving rise to this matter, including, but not limited to JW’s IEP and BIP, needed accommodations and supports, communications with Plaintiffs, dealings with other students and parents, including the Pontrellis, disciplinary notices, and HIB complaints.

Gerrit Kischner

Dorothy Wells

Sherri Estep (may call)

Sylwia Mazur Johnson (may call)

Frank Robertson, emergency instructional aide for JW

Liora Minkin (may call)

Ruth Solnit (may call)

Seattle Public Schools HIB/Security Department:

Peggy McAvoy

JOINT PRETRIAL ORDER - 12

HENRY & DEGRAFF, P.S.
150 NICKERSON ST, STE 311
SEATTLE, WASHINGTON 98109
telephone (206) 330-0595
fax (206) 400-7609

Beryl Miller

Special Education Department:

Ryan Richards

Mr. Richards may testify about the inability to find a safe and appropriate placement for JW in the District.

c/o Curran Law Firm
David Hokit, WSBA #13512
Sam Chalfant, WSBA #46080
555 West Smith Street
P.O. Box 140
Kent, WA 98035-0140
Phone: 253-852-2345

Other witnesses on behalf of Plaintiffs:

10. James Nakashima, bus driver (may call)

11660 18th Avenue S.W.
Burien, WA 98146-2523
206-605-1759

Mr. Nakashima will testify regarding the District's failure to notify him of J.W.'s safety plan.

11. David McMillin, former teacher (may call)
(509)263-3697

Mr. McMillin will testify regarding JW's second grade year, his knowledge of J.W. and his needs, and how JW was bullied and lacked social supports in 2nd grade.

12. Scott Pontrelli, R.P.'s father
4047 52nd Place S.W.
Seattle, WA 98116

Mr. Pontrelli will testify regarding his dealings with the District, his HIB reports filed against JW, his claims against the District, and communications with District Administration and staff.

Plaintiffs may call rebuttal witnesses that do not have to identified at this time.

1 Plaintiffs also reserve the right to call additional witnesses and list additional exhibits upon
2 receipt of discovery from the Academy of Precision Learning.

3
4 a) **On behalf of Defendant:** Dorothy Wells, c/o Curran Law Firm, P.S.; During the
5 2013–2014 school year, Ms. Wells was J.W.’s teacher at Schmitz Park Elementary
6 School. She attended IEP team meetings and other meetings related to J.W.,
7 communicated with the Parents regarding J.W., communicated with and directed staff
8 regarding J.W., and implemented services to J.W. It is expected that Ms. Wells will
9 testify regarding her knowledge and experiences as J.W.’s teacher during the 2013–
10 2014 school year, including his interactions with other students, and other matters
11 related to that school year at Schmitz Park Elementary School. *Will testify.*
12

13 b) **On behalf of Defendant:** Gerrit Kischner, c/o Curran Law Firm, P.S.; At all relevant
14 times, Mr. Kischner was the Principal at Schmitz Park Elementary School. He
15 attended IEP meetings and other meetings regarding J.W., communicated with the
16 Parents regarding J.W., directed staff regarding J.W., made administrative decisions
17 regarding J.W., communicated and interacted with R.P. and her parents, and made
18 administrative decisions related to R.P. It is expected that Mr. Kischner will testify
19 regarding his knowledge and experiences with J.W., R.P., and their respective parents
20 during the 2013–2014 school year. It is also expected that he will testify regarding
21 other matters related to issues at Schmitz Park Elementary School that occurred
22 during the 2013–2014 school year. *Will testify.*
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1 c) **On behalf of Defendant:** Sherri Estep, c/o Curran Law Firm, P.S., Ms. Estep was an
2 instructional assistant at Schmitz Park Elementary School during the 2013–2014
3 school year. She provided assistance to J.W., attended IEP team meetings and other
4 meetings regarding J.W., communicated with the Parents regarding J.W., and
5 implemented services to J.W. It is expected that Ms. Estep will testify regarding her
6 knowledge and experiences with J.W., her interactions with the Parents, and other
7 matters related to issues at Schmitz Park Elementary School that occurred during the
8 2013–2014 school year. *Will testify.*

9
10 d) **On behalf of Defendant:** Craig Garretson, c/o Curran Law Firm, P.S.; Mr. Garretson
11 was an instructional assistant at Schmitz Park Elementary School during the 2013–
12 2014 school year. He supervised J.W. during that school year, attended IEP team
13 meetings and other meetings regarding J.W., communicated with the Parents
14 regarding J.W., and implemented services to J.W. It is expected that Mr. Garretson
15 will testify regarding his knowledge and experiences with J.W., his interactions with
16 the Parents, and other matters related to issues at Schmitz Park Elementary School
17 that occurred during the 2013–2014 school year. *Will testify.*

18
19 e) **On behalf of Defendant:** Sylwia Johnson, c/o Curran Law Firm, P.S.; Ms. Johnson
20 was a special education resource room teacher at Schmitz Park Elementary School
21 during the 2013–2014 school year. She taught J.W., attended IEP team meetings and
22 other meetings regarding J.W., communicated with the Parents regarding J.W.,
23 communicated with and directed staff regarding J.W., and implemented services to
24 J.W. It is expected that Ms. Johnson will testify regarding her knowledge and
25

1 experiences with J.W., her interactions with the Parents, and other matters related to
2 issues at Schmitz Park Elementary School that occurred during the 2013–2014 school
3 year. *Will testify.*

4 f) **On behalf of Defendant:** Ruth Solnit, c/o Curran Law Firm, P.S.; Ms. Solnit was a
5 special education resource room teacher at Schmitz Park Elementary School during
6 the 2013–2014 school year. She taught J.W., attended IEP team meetings and other
7 meetings regarding J.W., communicated with the Parents regarding J.W.,
8 communicated with and directed staff regarding J.W., and implemented services to
9 J.W. It is expected that Ms. Solnit will testify regarding her knowledge and
10 experiences with J.W., her interactions with the Parents, and other matters related to
11 issues at Schmitz Park Elementary School that occurred during the 2013–2014 school
12 year. *Will testify.*

13
14 g) **On behalf of Defendant:** Carole Sealy, c/o Curran Law Firm, P.S.; Ms. Sealy was
15 J.W.'s physical education teacher at Schmitz Park Elementary School during the
16 2013–2014 school year. She communicated with staff regarding J.W. and
17 implemented services to him during that year. It is expected that Ms. Sealy will testify
18 regarding her knowledge and experiences as J.W.'s physical education teacher during
19 the 2013–2014 school year and other matters related to that school year at Schmitz
20 Park Elementary School. *Possible witness only.*

21
22 h) **On behalf of Defendant:** Frank Robertson, c/o Curran Law Firm, P.S.; Mr.
23 Robertson was an instructional assistant at Schmitz Park Elementary School during
24 the 2013–2014 school year. He served as a 1:1 instructional assistant for J.W. during
25

1 a portion of that school year and implemented services to J.W. It is expected that Mr.
2 Robertson will testify regarding his knowledge and experiences with J.W., his role as
3 an instructional assistant, and other matters related to issues at Schmitz Park
4 Elementary School that occurred during the 2013–2014 school year. *Possible witness*
5 *only.*

6 i) **On behalf of Defendant:** Nedra Peterson, c/o Curran Law Firm, P.S.; Ms. Peterson
7 was a consulting teacher for the District during the 2013–2014 school year. She
8 attended IEP meetings and other meetings regarding J.W. and communicated with the
9 Parents regarding J.W. It is expected that Ms. Peterson will testify regarding her
10 knowledge and experiences attending meetings related to J.W., her interactions with
11 the Parents, and other matters related to the 2013–2014 school year at Schmitz Park
12 Elementary School. *Possible witness only.*

13 j) **On behalf of Defendant:** Ryan Richards, c/o Curran Law Firm, P.S.; Mr. Richards
14 was a special education administrator who was involved in the development of J.W.'s
15 special education programing and communicated with the Parents in the spring and
16 summer of 2014. It is expected that Mr. Richards will testify about his knowledge
17 regarding J.W.'s programing, his interactions with the Parents, and other matters
18 related to the 2013–2014 school year. *Possible witness only.*

19 k) **On behalf of Defendant:** Michael Wells, c/o Curran Law Firm, P.S.; Mr. Wells was
20 a member of the District's Safety and Security Department who investigated HIB
21 complaints against J.W. made by R.P.'s parents through December 11, 2013 and
22 issued an investigation report on January 6, 2014. It is expected that Mr. Wells will
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testify about the knowledge he gathered throughout his investigations and any conclusions at which he arrived. *Possible witness only.*

- l) **On behalf of Defendant:** Pegi McEvoy, c/o Curran Law Firm, P.S.; Ms. McEvoy was an assistant superintendent of operations for the District. She was involved in the in the investigations of HIB complaints against J.W. It is expected that she will testify regarding her knowledge of HIB allegations against J.W. in the 2013–2014 school year. *Possible witness only.*
- m) **On behalf of Defendant:** Beryl Miller, c/o Curran Law Firm, P.S.; Ms. Miller was a HIB compliance officer. She was involved in the investigations of HIB complaints against J.W. and was also involved in the development of J.W.’s March 17, 2014 BIP. It is expected that she will testify regarding her knowledge of HIB allegations against J.W. in the 2013–2014 school year and the development of J.W.’s March 17, 2014 BIP. *Possible witness only.*
- n) **On behalf of Defendant:** Alison Moors-Lipshin, last known address was the Academy of Precision Learning, 5031 University Way NE, No. 105, Seattle, WA 98105; Ms. Moors-Lipshin was the Director of Specialized Learning at APL. It is expected that Ms. Moors-Lipshin will testify regarding her knowledge and experiences with J.W. since he began to attend APL at the beginning of the 2014–2015 school year. *Possible witness only.*
- o) **On behalf of Defendant:** Ben Wahl, Aspiring Youth Ryther – Main Campus, 2400 NE 95th St., Seattle, WA 98115; Mr. Wahl is a program director at Ryther, where J.W. received services over the summer in 2015 and 2016. Upon information and

belief, Mr. Wahl made administrative decisions related to J.W. and provided instruction to J.W. during those periods. Mr. Wahl was also interviewed by Dr. Brooks in August 2016. It is expected that Mr. Wahl will testify regarding his knowledge of and experiences with J.W. related to J.W.'s attendance at Ryther's summer program and APL. *Possible witness only.*

p) **On behalf of Defendant:** Peter Klingman, Academy of Precision Learning, 5031 University Way NE, No. 105, Seattle, WA 98105; Was a behavior technician at APL. Upon information and belief, Mr. Klingman worked with JW during his time at APL. It is expected that Mr. Klingman will testify regarding his knowledge of and experiences with JW related to JW's attendance at APL. *Possible witness only.*

Defendant also reserves the right to call additional witnesses and list additional exhibits upon receipt of discovery from the Academy of Precision Learning.

(5) Exhibits

A. Admissibility Stipulated.

Plaintiffs' Exhibits:

Plaintiffs' Ex. No.	Description	Authenticity	Admissibility
1	Behavior Scale for JW	Stipulate	Stipulate
2	Data Sheet for JW	Stipulate	
3	Review of Investigations and Actions Regarding HIB complaints	Stipulate	Stipulate
4	Incident Details	Stipulate	Stipulate
5	Notice of Disciplinary Action	Stipulate	Stipulate
6	Harassment, Intimidation or Bullying (HIB) Incident Report #1	Stipulate	Stipulate

7	Harassment, Intimidation or Bullying (HIB) Incident Report-#2	Stipulate	Stipulate
8	Harassment, Intimidation or Bullying (HIB) Incident Report-#3	Stipulate	Stipulate
9	Incident Details	Stipulate	Stipulate
10	Notice of Disciplinary Action	Stipulate	Stipulate
11	Harassment, Intimidation or Bullying (HIB) Incident Report	Stipulate	Stipulate
12	Harassment, Intimidation or Bullying (HIB) Incident Report	Stipulate	Stipulate
13	Incident Detail	Stipulate	Stipulate
14	Incident Details	Stipulate	Stipulate
15	Notice of Disciplinary Action	Stipulate	Stipulate
16	Incident Details	Stipulate	Stipulate
17	Notice of Disciplinary Action	Stipulate	Stipulate
18	Harassment, Intimidation or Bullying (HIB) Incident Report #1	Stipulate	Stipulate
19	Harassment, Intimidation or Bullying (HIB) Incident Report #2	Stipulate	Stipulate
20	Harassment, Intimidation or Bullying (HIB) Incident Report	Stipulate	Stipulate
21	Incident Detail and Notice of Disciplinary Action	Stipulate	Stipulate
22	Targeted Student Support Plan	Stipulate	Stipulate
23	Email from Eugene Wong to Kischner		
24	Email from Gerrit Kischner to Sylwia Mazur Johnson		
25	Email string between Beryl Miller, Kischner, Wongs, Dorothy Wells, etc.	Stipulate	Stipulate
26	Emails from Craig Garretson to Kischner	Stipulate	Stipulate
27	Email from redacted to Miller, Pegi McEvoy, Kischner	Stipulate	Stipulate
28	Email string between Kischner and Brad Fulkerson		
29	Email from Kischner to Jennifer Wong re temporary restraining order		
30	Email from Mazur Johnson to Kischner, etc. re Support Plan for JW	Stipulate	Stipulate
31	Emails between Miller and Kischner		
32	Letter from Beryl Miller		
33	Letter from Pegi McAvoy to Pontrellis	Stipulate	Stipulate
34	Letter from Pegi McAvoy and Israel Vela	Stipulate	Stipulate

35	Superintendent Procedure 3207SP.A Prohibition of Harassment, Intimidation & Bullying – Students	Stipulate	Stipulate
36	Seattle Public Schools Discipline Response Rubric	Stipulate	
37	Discipline Decision Making Template for Long-Term Suspensions and Expulsions	Stipulate	
38	Declaration of David McMillin in Support of JW	Stipulate	Stipulate
39	Seattle Public Schools Initial Disclosures	Stipulate	
40	Declaration of James Nakashima		
41	Email and letter from Dorothy Wells to Kischner		
42	Emails between Wells and Kischner	Stipulate	Stipulate
43	Email from Kischner to Wells	Stipulate	Stipulate
44	Emails between Wells and J. Wong	Stipulate	Stipulate
45	Emails from E. Wong, Mazur Johnson, Kischner	Stipulate	Stipulate
46	Emails between E. Milhem and Wongs	Stipulate	Stipulate
47	Emails between J Wong and E Milhem		
48	Confidential Psychological Information	Stipulate	Stipulate
49	Patient Encounter Reports for JW by Dr. Catherine Kuniyoshi	Stipulate	
50	Functional Behavioral Assessment (FBA)	Stipulate	
51	Email Stream - Wells to Kischner, Miller and responses - HIB Referrals / Safety Plan	Stipulate	Stipulate
52	Email from E. Milhem to Mazur & Wells to consult on BIP	Stipulate	Stipulate
53	Email Stream - Wong to Kischner, Miller, Wells, Vela and Kischner response - re: Safety Plan - Targeted Student Support Plan		
54	Email - Wong to Milhem - Results of Jan 2014 Meeting	Stipulate	Stipulate
55	Emails -Solnit (Special Education) to Kischner & Kischner to Solnit, Minkin, Mazur - Special Ed Team	Stipulate	Stipulate
56	Email - Watts (Counselor) to Schmitz Park staff & Garretson response - Student Motivation and Anxiety	Stipulate	Stipulate
57	Emails - Kischner to Mazur - Scheduling to review plan - game		

JOINT PRETRIAL ORDER - 21

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	plan - FBA and BIP to address work avoidance		
58	Emails - Milhem / Wong - re Incident in Classroom - Wells to Kischner, Solnit, Mazur email	Stipulate	Stipulate
59	Emails - Kischner to Fulkerson and Response - Safety Support Plan and Role of Aide - Unplanned visits		
60	Email Stream - Kischner to Fulkerson (Governors of Office of Education) Safety Support Plan		
61	Emails from Mazur to Peterson, Kischner, Minkin - TAT not requested	Stipulate	Stipulate
62	Email Stream from Mazur to Peterson, Solnit, Kischner, Richards - and Kischner to Mazur, Peterson - Restraining Order - Notice of Disciplinary Action - BIP	Stipulate	Stipulate
63	Email Stream from Fischer to Solnit & Mazur - Fischer to Solnit, Martin, Mazur, Martin to Solnit, Fischer - TAT Referral	Stipulate	Stipulate
64	Email from Garretson to Mazur Johnson	Stipulate	Stipulate
65	Emails between Kischner and E. Wong	Stipulate	Stipulate
66	Emails between J Wong and E Milhem - FBA and BIP	Stipulate	Stipulate
67	Email Kischner to Wongs, Solnit, Mazur, Peterson - FBA and BIP Draft 2		
68	Email Stream Schiers to Chalfant (Counsel) - and Kischner to McEvoy, Schiers, Boy - and McEvoy to Kischner, Schiers, Boy - FBA - BIP		
69	Email Stream Schiers to Chalfant (Counsel) - and Kischner to McEvoy, Schiers, Boyd - and McEvoy to Kischner, Schiers, Boyd - FBA - BIP	Stipulate	Stipulate
70	Email Stream - Wong to Kischner & Kischner to Wong - Accommodations		
71	Email Stream Kischner to Wong, Wong to Kischner - Show Cause Hearing - District Findings		
72	Emails from Kischner to Nedra Peterson, Richards, with forwarded email from E. Wong to Kischner		

73	Emails - Kischner to Wong, Peterson & Wong Response - re: IA Robertson leaving & JW Cumulative school file WITH ATTACHMENTS of JW's disciplinary file		
74	Email from Wong to Kischner		
75	Email from E. Wong to Kischner		
76	Email Stream - Kischner to Wong & Responses - Transition Plan and Placement		
77	Email Stream - Between Kischner and Wong - Purging of Materials (Disciplinary records) & student return		
78	Emails between E. Wong and Mazur Johnson		
79	JW Report Cards - Grades 2 & 3	Stipulate	Stipulate
80	Antiharassment Petition and Temporary Order, King County Superior Court 14-2-04376-7		
81	TRO Hearing Declaration of Erin Milhem Psy.D dated 03/07/2014 in Support of J Wong with Exhibit A	Stipulate	Stipulate
82	Declaration of Scott Pontrelli including exhibits, King County Superior Court 14-2-04376-7	Stipulate	Stipulate
83	TRO Hearing Declaration of Sherri Estep in Support of J Wong with Exhibit A	Stipulate	Stipulate
84	TRO Hearing Declaration of Rinamarie Leon-Guerrero, BCBA-D, PHD in Support of J Wong with Exhibit A	Stipulate	Stipulate
85	TRO Hearing Declaration of Steven McGregor in Support of J Wong with Exhibit A	Stipulate	Stipulate
86	Denial Order - Antiharassment - Quashing Temporary Restraining Order - King County Superior Court, Hon. Judge Benton	Stipulate	Stipulate
87	Hearing recording - King County Superior Court Clerk - PONTRELLI vs. WONG		
88	Findings of Fact and Conclusions of Law and Final Order, Administrative Law Judge Matthew Wacker	Stipulate	Stipulate
89	Catherine Kuniyoshi, M.D. practice fusion note dated 04/12/2016	Stipulate	

90	Catherine Kuniyoshi, M.D. practice fusion note	Stipulate	
91	Catherine Kuniyoshi, M.D. practice fusion note	Stipulate	
92	Psychotherapy Progress Note, Erin Milhem		
93	Confidential Psychological Evaluation CARE Clinic Psychological Evaluation by Julie A Osterling, PhD	Stipulate	
94	RinaMarie Leon-Guerrero, Ph.D., BCBA-D note dated 03/12/14		
95	Erin C. Milhem, Psy.D. Confidential Psychological Information Letter dated 03/18/2014	Stipulate	Stipulate
96	Allison Brooks, Ph.D. Evaluation Summary	Stipulate	Stipulate
97	Allison Brooks, Ph.D. Evaluation Summary		
98	Northwest Language and Learning Specialists Evaluation Report		
99	Face Sheet for Northwest Language and Learning Specialists Evaluation Report		
100	Erin C. Milhem, Psy.D., Psychotherapy Case Summary dated 11/03/2017	Stipulate	Stipulate
101	Julie Schoenfield-McNeill, Psy.D. Progress note dated 11/14/2017	Stipulate	
102	Report of Thom Thompson		
103	Report of Judith Parker, M.Ed., CDMS, ABVE-D, CLCP, FVE		
104	Letter to Curtis Leonard from Bridget Bourgette Shaw with attached email from Eugene Wong	Stipulate	
105	Letter to Judge Matthew D. Wacker dated 2/23/2016 re: Seattle School District, Special Ed. Cause No. 2015-SE-0018 by Howard Powers	Stipulate	
106	BIP	Stipulate	Stipulate
107	BIP	Stipulate	Stipulate
108	IEP Annual Review		
109	IEP Amendment		
110	Parent recommendations BIP		
111	SPS draft of FBA and BIP	Stipulate	Stipulate
112	Deposition of Gerrit Kischner, Volume I, pages 40, 50-54, 79-80,81-84, 120-121.	Stipulate	Stipulate

113	Deposition of Gerrit Kischner, Volume II, pages 154-158, 182-184, 188-191, 201-203, 219-222, 262-269.	Stipulate	Stipulate
114	Deposition of Dorothy Wells, pages 16, 20-24, 27-28, 32-37, 40, 42-43, 48-49, 52-53, 59-62, 73, 75-76	Stipulate	Stipulate
115	CV - Erin Milhem, Psy. D.	Stipulate	Stipulate
116	CV - RinaMarie Leon-Guerrero, Ph.D., BCBA	Stipulate	Stipulate
117	CV - Judith Parker, M.Ed., CDMS, ABVE-D, CLCP, FVE		
118	CV- Thom Thompson		
119	Costs Incurred for Which Reimbursement is Sought		
120	Spreadsheet of Hours- Time Parents have spent on this matter		
121	Attorney's Fees Invoice/Statements from 2014 defense of TRO and due process		
122	Letter from Lasher re: Eugene W. Wong Fee rates		
123	Invoicing Julie Schoenfield-McNeill, Psy.D.	Stipulate	
124	Emails between Jennifer Wong and Kischner re New Year's Celebration		
125	Emails between attorneys Howard Powers and David Hokit		
126	Billing statement Dr. Catherine Kuniyoshi		
127	Damages Summary and Detail		

Defendant's Exhibits:

Defendants' Ex. No.	DESCRIPTION	Authenticity	Admissibility
200	3/20/13 SPS Bus Incident and Student Progress Report	Stipulate	
201	2013 JW behavior trackers		
202	11/6/13 email between Jennifer Wong and Dr. Milhem	Stipulate	

203	11/11/13 email between Gerrit Kischner and Mr. Pontrelli	Stipulate	Stipulate
204	11/12/13 email between Jennifer Wong and Dorothy Wells	Stipulate	Stipulate
205	11/17/13 email between Gerrit Kirschner and Mr. Pontrelli	Stipulate	Stipulate
206	11/18/13 email chain between Gerrit Kischner and Eugene Wong	Stipulate	Stipulate
207	11/18/13 email chain between Gerrit Kischner and Scott Pontrelli	Stipulate	Stipulate
208	11/19/13 email from Mr. and Mrs. Pontrelli to SPS superintendent	Stipulate	Stipulate
209	11/19/13 email between Mr. and Mrs. Pontrelli to SPS school board	Stipulate	Stipulate
210	11/20/13 email from Gerrit Kischner to Sylwia Johnson	Stipulate	Stipulate
211	11/26/13 email between Ruth Solnit, Dorothy Wells, and Sylwia Johnson	Stipulate	Stipulate
212	12/11/13 email between Jennifer Wong and Dr. Milhem	Stipulate	Stipulate
213	12/12/13 email regarding safety plan meeting needed re: RP at Schmitz Park	Stipulate	Stipulate
214	12/16/13 email between Gerrit Kischner and Grace Gismervik	Stipulate	
215	12/17/13 email between Dorothy Wells and Jennifer Wong	Stipulate	
216	12/17/13 email from Gerrit Kischner to Dorothy Wells	Stipulate	
217	12/18/13 email between Gerrit Kischner and Eugene Wong	Stipulate	Stipulate
218	12/20/13 email from Gerrit Kischner to Michael Wells	Stipulate	Stipulate
219	1/6/14 Safety & Security Department Investigation Report		
220	1/6/14 letter from Beryl Miller to Mr. and Mrs. Pontrelli	Stipulate	Stipulate
221	1/8/14 email chain between Gerrit Kischner and Eugene Wong	Stipulate	Stipulate
222	1/10/14 email from Gerrit Kischner to Nedra Peterson and Ryan Richards	Stipulate	Stipulate
223	1/13/14 letter from Mr. and Mrs. Pontrelli to Pegi McEvoy	Stipulate	Stipulate
224	1/17/14 email from Gerrit Kischner	Stipulate	

225	1/17/14 email between Gerrit Kischner and Sylwia Johnson	Stipulate	Stipulate
226	1/21/14 email between Gerrit Kischner and Jennifer Wong	Stipulate	Stipulate
227	1/29/14 email from Gerrit Kischner to Mr. and Mrs. Wong		
228	1/29/14 email from Dorothy Wells to Mr. and Mrs. Wong	Stipulate	Stipulate
229	1/29/14 email between Jennifer Wong and Dr. Milhem		
230	1/29/14 email chain between Gerrit Kischner and Brad Fulkerson	Stipulate	Stipulate
231	1/30/14 email chain between Gerrit Kischner and Brad Fulkerson	Stipulate	Stipulate
232	2/6/14 letter from Mr. and Mrs. Pontrelli to Pegi McEvoy	Stipulate	Stipulate
233	2/7/14 email from Dorothy Wells to Gerrit Kischner		
234	2/7/14 email from Gerrit Kischner to Jennifer Wong	Stipulate	Stipulate
235	2/7/14 email from Mr. and Mrs. Pontrelli to Grad Fulkerson	Stipulate	Stipulate
236	2/12/14 email between Jennifer Wong and Dr. Milhem	Stipulate	Stipulate
237	2/14/14 email between Pegi McEvoy and Mr. and Mrs. Pontrelli		
238	2/14/14 email between Jennifer Wong and Dr. Milhem		
239	2/17/14 email from Dorothy Wells to Mr. and Mrs. Pontrelli and to Gerrit Kischner	Stipulate	Stipulate
240	2/17/14 email between Gerri Kischner and Jan Stephenson	Stipulate	Stipulate
241	2/25/14 email from Pegi McEvoy to Gerrit Kischner	Stipulate	Stipulate
242	2/25/14 email from Gerrit Kischner to team	Stipulate	Stipulate
243	2/26/14 email between Gerrit Kischner and Eugene Wong	Stipulate	Stipulate
244	2/26/14 email from Eugene Wong to Dorothy Wells and Gerrit Kischner	Stipulate	Stipulate
245	3/3/14 email from Craig Garretson and Dorothy Wells and Sylwia Johnson	Stipulate	Stipulate
246	3/3/14 email Gerrit Kischner to Sylwia Johnson	Stipulate	Stipulate

247	3/6/14 email between Eugene Wong and Gerrit Kischner	Stipulate	Stipulate
248	3/6/14 email from Jennifer Wong to RinaMarie Leon-Guerrero and Dr. Milhem		
249	3/9/14 email between Jennifer Wong and Dr. Milhem		
250	3/10/14 email between Gerrit Kischner and Eugene Wong	Stipulate	Stipulate
251	3/19/14 email from Jennifer Wong to RinaMarie Leon-Guerrero and Dr. Milhem		
252	3/28/14 letter from Mr. and Mrs. Pontrelli to Pegi McEvoy	Stipulate	Stipulate
253	4/1/14 email between Gerrit Kischner and Eugene Wong	Stipulate	Stipulate
254	4/10/14 email between SPS staff and Mr. and Mrs. Wong	Stipulate	Stipulate
255	8/4/15 email from Dr. Milhem to Jennifer Wong		
256	10/7/16 email from Dr. Milhem to Dr. Brooks		
257	11/25/13 SPS Functional Behavioral Assessment	Stipulate	Stipulate
258	11/25/13 SPS Behavioral Intervention Plan	Stipulate	Stipulate
259	9/23/13 SPS IEP	Stipulate	Stipulate
260	1/15/14 SPS IEP Amendment	Stipulate	Stipulate
261	1/30/14 Parent recommendations for BIP		
262	March 2014 behavior intervention plan meeting notices	Stipulate	
263	July 2013 to March 2017 Dr. Milhem psychotherapy treatment plans and billing		
264	July 2013 to March 2017 Dr. Milhem psychotherapy progress notes and consultation notes		
265	2/15/14 Dr. Milhem letter	Stipulate	Stipulate
266	9/16/10 Dr. Snell Progress Notes		
267	9/23/10 Dr. Snell Progress Notes		
268	10/22/10 Dr. Snell Progress Notes		
269	CARE Clinic intake forms		
270	Brooks Powers Group intake information		
271	8/23/16 Dr. Brooks interview of Ben Wahl		
272	9/8/16 Dr. Brooks interviews of APL staff		

273	2016 and 2017 Dr. Brooks interviews of Dr. Milhem		
274	11/15/16 Dr. Brooks evaluation	Stipulate	Stipulate
275	9/11/14 SPS PowerSchool discipline reports	Stipulate	Stipulate
276	11/7/13 SPS Incident Reporting Form	Stipulate	Stipulate
277	11/8/13 SPS Incident Reporting Form	Stipulate	Stipulate
278	11/13/13 SPS Incident Reporting Form	Stipulate	Stipulate
279	11/15/13 SPS Incident Reporting Form	Stipulate	Stipulate
280	11/18/13 SPS Incident Reporting Form	Stipulate	Stipulate
281	12/10/13 SPS Incident Reporting Form	Stipulate	Stipulate
282	11/21/13 RP Targeted Student Support Plan	Stipulate	Stipulate
283	11/19/13 Seattle Police Department Complaint No. CP 2013-418893		
284	12/1/13 Seattle Police Department Complaint No. CP 2013-432301		
285	Seattle Police Department General Offense No. GO 2013-432301		
286	<i>Pontrelli v. JW King County Superior Court Cause No. 14-2-04376-7 SEA pleadings</i>	Stipulate	Stipulate
287	SPS Policy No. 3207	Stipulate	Stipulate
288	APL data tracking		
289	1/21/16 ROOTS Behavior Support Plan		

(6) Action by the Court

- a. This case is scheduled for trial without a jury on October 23, 2018.
- b. Trial briefs are due September 24, 2018.

1 This order has been approved by the parties as evidence by the signatures of their
2 counsel. This order shall control the subsequent course of action unless modified by subsequent
3 order. This order shall not be amended except by order of the court pursuant to agreement by the
4 parties or to prevent manifest injustice.

5
6 Respectfully submitted this 18 day of September 2018.

7 /s/ Bridget Bourgette Shaw

8 Bridget Bourgette Shaw, Esq.

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